

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

In the matter of:

PUERTO RICO ELECTRIC POWER
AUTHORITY,
Palo Seco Steam Plant
Toa Baja, Puerto Rico

NOTICE OF VIOLATION:

Index No. CAA-02-2002-1312

I. STATUTORY AUTHORITY

THIS NOTICE OF VIOLATION ("NOV") is issued to the Puerto Rico Electric Power Authority, ("Respondent") for violations at its Palo Seco Steam Plant located at PR Road 165, km14.0, Toa Baja, Puerto Rico (the "facility"), pursuant to Section 113 of the Clean Air Act (the "Act"), 42 U.S.C. §7413, as amended. Section 113 of the Act requires the Administrator of the U.S. Environmental Protection Agency ("EPA") to notify both the person and the State in which the violation occurred of the finding whenever EPA finds that a person violated a requirement of a State Implementation Plan ("SIP"). The authority to issue this NOV has been duly delegated to the Division Director of the Caribbean Environmental Protection Division, from the Administrator through the Regional Administrator of EPA Region 2.

II. EPA FINDINGS: PUERTO RICO SIP:

A. Visible Emissions:

Rule 403 of the Puerto Rico Regulation for the Control of Atmospheric Pollution, (PRRCAP) Visible Emissions, provides in pertinent part that:

No person shall cause or permit the emission of visible air pollutants of an opacity greater than 20 percent (6-minute average). Compliance with the visible emissions limitation shall be determined by using the test methods in Rule 106.

Respondent owns and operates the Palo Seco Steam Plant which is a source of air emissions. On or about February 6, 2002, duly-designated EPA inspectors conducted a visual emission

evaluation at Respondent's Palo Seco Steam Plant.

During the evaluation, the EPA inspector observed that Respondent was operating the facility with a visual emission greater than 20% opacity. Specifically, the visual emission readings taken by the EPA inspectors on February 6, 2002, show the following violations:

UNIT	VISIBLE EMISSIONS READING
Stack 3-1	22.92%, 27.71%, 21.46%

Respondent's operation of the facility, as described above, is in violation of the applicable statutes and regulations of both Commonwealth and federal law until it establishes continued compliance. Furthermore, EPA and Respondent entered into a Consent Decree, Civil Action No. 93-2527 CCC, under which Respondent is obliged to operate each generating facility in compliance with Rule 403 of the PRRCAP and the applicable federal law.

III. ENFORCEMENT

Section 113 of the Act, 42 U.S.C. § 7413, provides that after 30 days from the issuance of this NOV, the EPA may:

- issue an order requiring compliance with the requirements or prohibitions of the SIP;
- issue an administrative penalty order pursuant to Section 113(d) of the Act, for civil administrative penalties of up to \$25,000¹ per day of violation;
- bring a civil action pursuant to Section 113 (b) of the Act, for injunction relief and/or civil penalties of not more than \$25,000² per day for each violation.
- bring a criminal prosecution seeking fines and/or imprisonment pursuant to Section

¹See the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Pub. L. 101-410, enacted October 5, 1990; 104 Stat.890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 note; Public Law 104-134, enacted April 26, 1996; 110 Stat. 1321). The Debt Collection Improvement Act or "DCIA" requires each Federal agency to issue regulations adjusting for inflation the maximum civil monetary penalties that can be imposed pursuant to such agency's statutes. With the adoption of this rule implementing these statutes, all violations which take place after January 30, 1997 are subject to the new statutory maximum civil penalty amounts. With limited exceptions not relevant to this referral, all of the statutory penalty provisions applicable to this action have been increased by the maximum allowed: ten percent. All affected penalty provisions and their statutory maximum amounts are set out in Table 1 of 40 C.F.R. § 19.4. In this case, the statutory maximum penalties under the CAA are increased to \$27,500 under the DCIA as well as under the CAA penalty policy amounts.

²/id at n.1.

113(c) if Respondent knowingly violates any requirement or prohibition of an applicable implementation plan during any period of federally assumed enforcement.

IV. PENALTY ASSESSMENT CRITERIA

If a penalty is assessed in a civil or administrative action, Section 113 (e)(1) of the Act, 42 U.S.C. § 7413 (e) (1), states that the Administrator or the court, as appropriate, shall, in determining the amount of penalty to be assessed, consider (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

Section 113 (e)(2) of the Act, 42 U.S.C. § 7413 (e) (2), allows the Administrator, or the court as appropriate, to assess a penalty for each day of violation. The number of days of violation shall include the date of the notice and each and every day thereafter until Respondent achieves continuous compliance. If Respondent proves that there was an intermittent day of compliance or that the violation was not continuous in nature, then the EPA may reduce the penalty accordingly.

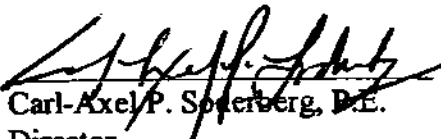
Upon conviction under Section 113(c), Respondent may be fined pursuant to Title 18 of the United States Code, or imprisoned for a term not to exceed five years or both. If the person is a second time offender, the maximum punishment shall be doubled with respect to both the fine and the term of imprisonment. Also, the facility will be declared ineligible for Federal contracts, grants, and loans. The Administrator may extend this ineligibility to other facilities owned by the Respondent (Section 306 of the Act, the regulations promulgated thereunder at 40 CFR Part 15, and Executive Order 11738).

V. OPPORTUNITY TO CONFER

Regarding the violations included in this NOV, EPA may give an opportunity to Respondent to confer provided it requests such a conference within five (5) days of receipt of this NOV. A request for a conference should be directed to:

Hector Vélez Cruz, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
1492 Ponce de Leon Ave.
Centro Europa Building Suite 207
San Juan, Puerto Rico 00910
(787) - 977-5850

Issued: 03-11-02
San Juan, Puerto Rico


Carl-Axel P. Soderberg, D.E.
Director
Caribbean Environmental Protection Division
1492 Ponce de Leon Ave.
Centro Europa Building Suite 417
San Juan, Puerto Rico 00910
(787) - 977-5801

To: Mr. Hector Rosario
Executive Director
Puerto Rico Electric Power Authority
G.P.O. Box 364267
San Juan, Puerto Rico 00907-0386

cc: Mr. Angel O. Berrios, Director
Air Quality Area
Puerto Rico Environmental Quality Board
P.O. Box 11488
San Juan, Puerto Rico 00910

VISIBLE EMISSION OBSERVATION FORM 1

Methodized (Circle One)
Method 9 ZBA 2008 Other

Company Name
PREPA

Facility Name
PALESCO

Street Address
ROAD 165

City
TOA BAJA State **PR** Zip

Process
Electric Power Gen. Unit # **3-1** Operating Mode
Control Equipment
Combustion Operating Mode

Describe Emission Point
Orange and white stripes

Height of Emiss. Pt.
Start **254'** End **same** Height of Emiss. Pt. Rel. to Observer
Start **254'** End **same**
Direction to Emiss. Pt. (Degrees)
Start **377'** End **same** Start **35° NE** End **same**

Vertical Angle to Obs. Pt.
Start **16°** End **16°** Direction to Obs. Pt. (Degrees)
Start **35° NE** End **same**
Distance and Direction to Observation Point from Emission Point
Start **4 stacks height** End **same**

Describe Emissions
Start **Lofting** End **same**
Emission Color
Start **White to** End **same** Molar Droplet Furne
Start **Gray** End **same** Attached ☒ Detached ☐ None ☐

Describe Plume Background
Start **SKY** End **same**
Background Color
Start **Blue** End **same** Sky Conditions
Start **Scattered** End **same**
Wind Speed
Start **5.0 mph** End **same** Wind Direction
Start **E to W** End **same**
Ambient Temp.
Start **92°F** End **92°F** Wet Bulb Temp. RH Percent
Start **52**

Source Layout Sketch

Draw North Arrow
☐ TN ☐ NW

Longitude Latitude Destination

Additional Information

VEOF1.1

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Continued on VEO Form Number

Observation Date
02/06/02 Time Zone
ET-PR Start Time
3:35 PM End Time
4:05 PM

Sec Min	0	15	30	45	Comments
1	30	30	25	25	
2	25	20	15	10	
3	15	25	25	25	$550 = 22.92$
4	25	20	15	10	24
5	25	25	25	25	
6	25	25	30	30	
7	25	30	35	30	
8	30	25	30	30	
9	30	30	25	30	$665 = 27.71$
10	30	30	25	30	24
11	20	30	30	30	
12	25	20	25	20	
13	25	25	25	30	
14	30	25	30	30	
15	30	30	30	20	
16	15	20	30	20	
17	20	20	15	20	
18	25	20	—	—	* White to Gray clouds on background
19	20	25	25	20	
20	20	20	25	—	* white to Gray clouds on background
21	—	—	15	15	* white to Gray clouds on background
22	15	15	20	20	
23	20	20	25	25	
24	25	20	25	20	
25	25	20	20	15	21.46%
26	15	15	15	20	
27	20	20	25	30	$495 = 20.63$
28	30	20	20	25	24
29	20	15	20	20	
30	20	20	20	25	

Observer's Name (Print)
John Aponte

Observer's Signature
John Aponte Date
02/06/02

USEPA
Continued by
ETA Date
12/05/01